



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/161690

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed November 03, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on December 04, 2014, at Port Washington, Wisconsin. The record was held open post-hearing for submission of additional documents by the Petitioner and the agency.

The issue for determination is whether the agency properly denied the Petitioner's application for Medicaid benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services  
121 W. Main Street  
PO Box 994  
Port Washington, WI 53074-0994

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.

2. Petitioner was not a United States citizen. He was a Lawfully Admitted Temporary visitor to the U.S. and was visiting relatives in Wisconsin when he received emergency medical treatment starting September 22, 2014 and then passed away on September 26, 2014.
3. On September 26, 2014, an application for MA benefits was submitted on behalf of the Petitioner.
4. On October 8, 2014, the Petitioner's representatives submitted a WI Medicaid Certification of Emergency for Non-U.S. Citizens signed on October 2, 2014.
5. On October 15, 2014, the agency issued a Notice of Decision to the Petitioner informing him that his MA application was denied because he did not live in Wisconsin and was not a U.S. citizen or eligible immigrant.
6. Petitioner had no intent to reside in Wisconsin.
7. On November 3, 2014, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

### **DISCUSSION**

Federal law states as follows:

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, ***an alien who is not a qualified alien*** (as defined in section 1641 of this title) ***is not eligible for any Federal public benefit*** (as defined in subsection (c) of this section).

(b) Exceptions

(1) Subsection (a) of this section shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 U.S.C. 1396b (v)(3)]) of the alien involved and are not related to an organ transplant procedure, ***if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan*** approved under such title (other than the requirement of the receipt of aid or assistance under title IV of such Act [42 U.S.C. 601 et seq.], supplemental security income benefits under title XVI of such Act [42 U.S.C. 1381 et seq.], or a State supplementary payment).

...

8 U.S.C. §1611 (emphasis added).

A “qualified alien” is defined in the federal regulations as follows:

(b) Qualified alien

For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

- (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],
- (2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],
- (3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],
- (4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182 (d)(5)] for a period of at least 1 year,
- (5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231 (b)(3)] (as amended by section 305(a) of division C of Public Law 104–208),
- (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153 (a)(7)] as in effect prior to April 1, 1980; [1] or
- (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

8 U.S.C. § 1641(b).

In Wisconsin, to be eligible for Medicaid, an individual must meet the following criteria:

- 1. Be elderly, blind, or disabled
- 2. ***Be a resident of the state of Wisconsin*** (See 6.1 Residency Eligibility)
- 3. ***Be a US citizen or Qualifying Immigrant*** (See 7.1 US Citizens and Nationals)
- 4. Cooperate with medical support liability
- 5. Cooperate with third party liability
- 6. Provide SSN or apply (See 10.1 SSN Requirements)
- 7. Pay a premium if required
- 8. Pay a community waiver/FamilyCare cost share if required

Medicaid Eligibility Handbook (MEH) §4.1.

To be considered a resident of Wisconsin, two criteria must be met. The individual must:

- 1. Be physically present in Wisconsin. There is no required length of time the person has to have been physically present, and
- 2. Express intent to reside here.

MEH §6.1.1.

An immigrant is a person who resides in the U.S. but is not a U.S. citizen or national. Certain immigrants may qualify for MA benefits. MEH §7.3.1.

In this case, there is no dispute that the Petitioner is not an immigrant. He did not reside in the U.S. and did not express an intent to live in the U.S. He was visiting the U.S. for 5 weeks and was lawfully admitted as a temporary visitor. He did not meet the definition of a “qualified alien” for public benefits

under federal law. He also did not meet the Wisconsin criteria for MA because he did not reside in Wisconsin and did not intend to reside in Wisconsin.

Based on the evidence presented, I conclude the agency properly denied the Petitioner's application for MA benefits.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner's application for MA benefits.

**THEREFORE, it is**

### **ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

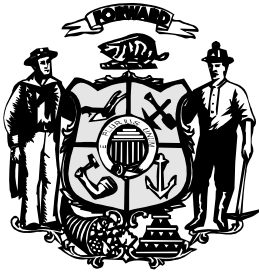
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of February, 2015

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 10, 2015.

Ozaukee County Department of Social Services  
Division of Health Care Access and Accountability